HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32(2)(b)

Description of the case.

W.P.No. 1122 of 2002 (S/B)

Smt. Sushila Barokoti
Vs.
State of Uttaranchal and another.

Approval for reporting.

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Not approved for reporting.

Date of decision 13.07.2004

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1122 of 2002 (S/B)

Smt. Sushila Barokoti

And others .....Petitioner

Vs.

State of Uttaranchal

And others. .....Respondents

Counsel for the petitioner Shri V.K. Bisht.
Standing Counsel for the Respondents.

Dated:- 13-7-2004

Hon'ble Rajesh Tandon J.

Heard Shri V.K. Bisht Learned counsel for the petitioners and Standing counsel for the respondents.

By the present writ petition, the petitioners have prayed for the issue of a writ, order or direction in the nature of mandamus directing the respondents to revise the pay scale of the petitioners and grant them same pay scale that is being given to Sub-Deputy Inspector of Schools/Assistant Basic Shiksha Adhikari of the State w.e.f. 01-01-96.

Brief facts giving rise to the present writ petition are that the Petitioner No. 1 was appointed on 30-9-1971 as Assistant Attendance Officer (Woman) in the pay scale of Rs. 195-300. At present the Petitioner No. 1 is posted as Assistant City Education Officer, Haridwar in the pay scale of Rs. 3050-4590. In the year 1994 the designation of Assistant Attendance Officer was changed as Assistant Education Superintendent and in the year 1998 it was again changed as Assistant City Education Officer.

Petitioner No. 2 was appointed as Assistant Education Superintendent on 1-4-1995 in the pay scale of Rs. 950-1500 and was posted in Dehradun. At present the petitioner No. 2 is posted as Assistant City Education Officer, Dehradun and the present pay scale of petitioner No. 2 is Rs. 3050-4590.

Petitioner No.3 was appointed as Assistant Education Superintendent on 20-8-1997 and was posted in City area of Haridwar. At present the petitioner No. 3 is posted as Assistant City Education Officer, Haridwar and the present pay scale of the petitioner No. 3 is Rs. 3050-4590.

Petitioner No. 4 was appointed as Assistant City Education Officer on 27-11-1998 and was posted in City area of Haridwar. At present the respondent No. 4 is posted as Assistant City Education Officer, Haldwani and the present pay scale of the petitioner no.4 is Rs. 3050-4430.

After creation of Basic Shiksha Parishad, Services of all Education Superintendents and Assistant Education Superintendents working in Cities were brought under Basic Shiksha Parishad under U.P. Basic Education Act, 1972. The services of Education Superintendents and Assistant Education Superintendent were governed by the Nagar Palika Centralized Service Rules and Promotion avenues were open under Nagar Palika Service. The petitioners would have also got promoted on the post of Education Superintendent Executive Officer and UP Mukhya Adhikari.

The petitioner No. 1 was appointed as Assistant Attendance Officer (Assistant City Education Officer) in the year 1971 and she has completed 31 years of service and she could not get even a singly promotion during this tenure. The earlier promotions were made on the post of Assistant

Attendance Officer (Assistant City Education Officer) from the senior most Head Masters of Junior High Schools, but the U.P. Basic Shiksha Parishad vide order dt. 26-4-1986 changed the criteria of promotion and provided that promotion on the post of Assistant Attendance Officer (Assistant City Education Officer) will be made from senior most Assistant Teachers of primary schools and the minimum qualification for the post of Assistant Attendance Officer (Assistant City Education Officer) was intermediate but the U.P. Basic Parishad vide order dated 21-1-87 has changed it as graduation.

According to the petitioner prior to 1-8-1972 the pay scale of Assistant Attendance Officer (Assistant City Education Officer) was Rs. 100-250 and was higher than the pay scale of Head Masters of Junior High School who were getting the pay scale of Rs. 120-200/- but subsequently, the pay scale of Assistant Attendance Officer was reduced, in view of the various pay Commission's report and presently they are getting pay scale even lesser than that of Assistant Teachers of Primary Schools.

On 24-8-2002 following order was passed by the Division Bench of this court: -

" *Learned chief Standing Counsel for the state of Uttaranchal and learned Standing Counsel for the State of U.P. pray for and are allowed six weeks time to file counter affidavit.*

List after six weeks."

On 9-3-1994 the Hon'ble High Court directed the respondents to pay same salary to the petitioners (of the writ

petition), which was being paid to the Deputy Inspector of Schools or show cause. Following order was passed by the High Court.

" Opposite parites are directed to pay same salary to petitioners which is being paid to the Deputy Inspector of Schools or show cause on the date of listing."

The post of Sub Deputy Inspector of Schools initially carried the pay scale of Rs. 120-200 w.e.f. 1945 which was revised w.e.f. 1955 to the level of Rs. 120-300 w.e.f. 1965 to the level of Rs. 150-350 w.e.f. from 1972 to the level of Rs. 325-575 w.e.f. 1-7-1979 to the level of Rs. 540-910 w.e.f. 1-1-86 to the level of Rs. 1400-2300 and w.e.f. 1-1-96 to the level of Rs. 4500-7000 and the Assistant Basic Shiksha Adhikari also carries the same pay scale as the mentioned in the above paragraph.

The petitioner has referred Subordinate Education (Sub Deputy Inspector of Schools Service Rules, 1992). Where the status of the service known as Sub Deputy Inspector of Schools has been defined Rule 2 provides as under:-

"Status of the Service- The Uttar Pradesh Subordinate Education Sub Deputy Inspector of Schools Service is a Subordinate Educational Service Comprising Group 'C' posts."

Part II of the aforesaid rule provides cadre of service of the following effect:-

"Cadre of Service- (1) The strength of the Service and of each category, of posts therein shall be such as may be determined by the Government from time to time.

(2) The strength of the Service and of each category of posts therein shall, until orders varying the same are passed under sub-rule (1), be as given in the Appendix:

Provided that-

(i) the appointing authority may leave unfilled or the Governor may hold in abeyance any vacant post, without thereby entitling any person to compensation; or

(ii) the Governor may create such additional permanent or temporary posts as he may consider proper.

Part III defines Source of Recruitment Rule 5 provides as under:-

Source of Recruitment- Recruitment to the various categories of posts in the Service shall be made the following sources:

(1) 10 percent by direct recruitment through Selection Committee from amongst such head masters/head mistress as have completed ten years service on their respective posts on the first day of the year of recruitment,

(2) 80 percent by direct recruitment through the Commission..

(3) 10 percent by promotion through the Selection Committee from amongst qualified extension teachers and craft teachers working in C.T.

Grade and appointed under Reorientation Scheme on or before April 11, 1980:

As will appear from the aforesaid rules containing recruitment of 10% by way of Direct Recruitment through Selection Committee from amongst such Assistant Attendance Officer (Petitioner No.1) (Assistant City Education Officer) who have completed 31 years of service from respective posts. Sub clause 2 of the rule 5 relates to the direct recruitment from the commission. Sub Rule 3 provides a quota of 10% to promotion from the Selection Committee from amongst qualified teachers and craft teachers working in C.T. Grade Reorientation Scheme on or before April 11, 1980.

As will appear from Rule 5 of the head masters/head mistress have to be promoted in L.T. Cadre to the extent of 10% for the appointment of Sub Deputy Inspector of Schools. Counsel for the petitioner has submitted that the posts of Head Master of Junior High School initially carried a pay scale of Rs. 75-175 with effect from 1945 but gradually the Selection Grade was given by way of revision by the government on 20-12-2001 and now the pay scale is of Rs. 6500-10500. The chart has been submitted, the same is quoted below:-

As effective from	Pay scale applicable to the post of Sub Deputy Inspector of Schools/Assistant Basic Shiksha Adhikari	Pay scale applicable to the post of Deputy Basic Shiksha Adhikari	Pay scale applicable to the post of Head Master of Jr. High School.
1945	Rs. 120-200	Rs. 200-350	Rs. 75-175
1955	Rs. 120-300	Rs. 250-500	Rs. 100-200

1965	Rs. 250-350	Rs. 250-600	Rs. 100-250
1972	Rs. 325-575	Rs. 450-950	Rs. 240-390
1-7-1979	Rs. 540-910	Rs. 770-1600	Rs. 490-860
1-1-1986	Rs. 1400-2300	Rs. 2000-3500	Rs. 1450-2300
1-1-1996	Rs. 4500-7000	Rs. 6500-10500	Rs. 4625-7000
1-7-2001	Not revised	Not revised	Rs. 6500-10500

Recently, the Allahabad High Court has issued a mandamus to the State of U.P. for granting higher pay scale of Rs. 7500-12000/- to Sub Deputy Inspector/ Assistant Basic Shiksha Adhikari and pay scale of Rs. 9000/- to 13570/- to Deputy Basic Shiksha Adhikari on the ground that nature of their work is supervising the work of Head Master of Junior High School. The State Govt. vide order dt. 21-12-2001 has also revised the pay scale of the Master of Junior High School to Rs. 6500 to 10500/- and selection grade Rs. 8000/- to 13,500/-. The petitioner are getting less pay scale than the Assistant Teacher of Primary Schools inspite of the fact that Assistant City Education Officers are promoted from Senior most Assistant Teachers of Primary Schools as the work and duties of the petitioners are same as those of the Sub-Deputy Inspector/ Assistant Basic Adhikari, the petitioners are entitled for same as is being given to Sub-Deputy Inspector/ Assistant Basic Shiksha Adhikari.

Counsel for the petitioner has submitted that the pay scale of the posts of Head Master of Junior High School was recovered by the Government Order 20-12-2001. The pay scale of Assistant Teacher was also revised in C.T. Grade to the extent of Rs. 5500-9000. It has also been remembered that the C.T. Grade has merged in L.T. Grade and the promotional pay scale

was fixed by the G.O. dt. 20-7-2001. L.T. Grade Teachers are getting the promotional pay scale of Rs. 7500-12000.

Counsel for the petitioner has submitted Sub Deputy Inspector of School is also exercising the administrative control over Junior High School and he is also exercising the following administrative function over Headmaster of Junior High Schools. The same are quoted below:-

a. *Transfer within the Block.*
b. *Sanctioning authority for all types of leave subject to a maximum leave of 42 days.*
c. *Preparation and presentation of salary bill.*
d. *Maintenance of Service Book and Character Rolls and anomalies existing therein.*
e. *Panel inspection and regular inspection of teaching/administrative work.*
f. *Preparation of seniority list at the Block Level.*
g. *Preparation and presentation of papers pertaining to pension/Provident Fund/Group Insurance.*
h. *Recommendation of Selection quota/ promotion pay scale.*
i. *Initiation of departmental action.*

In order to justify the aforesaid administrative functions the petitioner has referred the G.O. dt. 10th May 1986 to the following effect:-

fodkl [k.M Lrj dh lfefr;ksa dk vkj vf/kd izHkkoh o fd;k 'khy cuk;s tkus ds fy;s ;g vko';d gks x;k g fd bl Lrj ij dk;jr dkfeZdksa ds vf/kdkjksa ,oa nkf;Roksa dk iquZ ifjHkkf"kr djrs gq;s mUgsa vkj vf/kdkjh inku fd;s tk;s rkfd ;g mu fofHkUu dk;Zdekas dk lapkyu fodkl [kaM dk Lorar

fodkl dh i.k bdkbZ ekurs gq;s lqpkfyr dj ldrs A vrs mi fo|ky; fujh{kd rFkk ifr mi fo|ky; fujh{kd d inukeksa dk mijkDr vi{kkvksa d vuq:Ik iuZ ifjHkkf"kr@ifjofrZr fd;s tkus dk fu.kZ; 'kklu }kjk fy;k x;k gSA

The petitioners have also referred regarding the report of the Bajaj Committee for reconsidering the pay scale as well as the Sub Committee, which was constituted by the State Govt. 17-11-97 for considering the revision of the pay scale of teachers. The petitioners have stated that they have also made their objection for revision of the pay scale but of no avail and as such anomaly has been created by the Govt. by creating a disparity in the pay scale of headmasters and Sub Deputy Inspector of Schools.

In G.O. dated 17-10-2000 pay scales in Nagar Palika and Maha Palika are proposed as under:-

" उक्त स्थिति में सम्प्रति 4 श्रेणियों र्वितनक्रमक्रमें विभाजित नगर प्रिक्षा अधिकारियों को निम्नवत दो श्रेणियों में समायोजित किये जाने के इस संवर्ग में कार्य के प्रति उत्साह और लगन में वृद्धि होगीः–

1– नगर महापालिका के 15 वेतनक्रम 5000.00 तथा नगर पालिका प्रथम श्रेणी के 54 पदों र्वि500–7250क्र को उप बेसिक प्रिक्षा अधिकारी के समकक्ष वेतनक्रम 6500–10500 में उच्चीकृत कर दिया जायें।

2– नगरपालिका द्वितीय श्रेणी के 36 एवं नगरपालिका तृतीय श्रेणी वेतनक्रम 4500–7000 को वेतनक्रम 5000–8000 में उच्चीकृत कर दिया जाये।

उक्त के अतिरिक्त सहायक नगर प्रिक्षा अधिकारियों के 152 पदों को मृत घोषित कर दिया जायें इन पदों में वर्तमान में कार्यरत अधिकारियों की प्रोन्नति नगर प्रिक्षा अधिकारी के प्रस्तावित वेतनक्रम 5000–8000 में किये जाने की व्यवस्था की जा सकती है। जैसे जैसे इन सहायक नगर प्रिक्षा अधिकारियों की

प्रोन्नति उक्त वेतनक्रम में होगी वैसे–वैसे इनके पद स्वतः समाप्त होते जायेंगे। इन सहायक नगर शिक्षा अधिकारियों की प्रोन्नति के पश्चात नगर शिक्षा अधिकारी की भांति उच्च प्राथमिक विद्यालयों में कार्यरत अध्यापकों की प्रोन्नति की जा सकती है। इस व्यवस्था से शासन पर अधिक व्यवहार नहीं पड़ेगा क्योंकि एक और 126 पदों के वेतनक्रमों को उच्चीकृत किया जायेगा वहीं दूसरी और सहायक नगर शिक्षा अधिकारियों के 152 पद समाप्त हो जायेंगे।"

In reply to the show cause notice, the respondents have brought to the notice that the Sub Inspector of Junior High Schools are not covered under the recommendation of the 5th Pay Commission.

As already pointed out that in accordance with the recruitment rule 10% of the quota are being filled up by promotion amongst Headmasters and as such the petitioners cannot be deprived from the revision of their pay scales.

In Uttar Pradeshiya Vidyalaya Nirikshak Sangh Vs. State of U.P. 2003(3) AWC 1957. The Division Bench of the Allahabad High Court as held as under:-

Paragraph-9 *"A counter affidavit has been filed by the respondents and we have perused the same. It is stated in paragraph 3 of the Counter affidavit that while the pay scale of teachers was revised by G.O. dated 20-7-2001 no decision was taken with regard to the pay scale of Sub-Deputy Inspector of Schools/ Assistant Basic Shiksha Adhikari and Deputy Basic Shiksha Adhikari. There is no denial that the pay scale of Head Master was earlier lower than that of the petitioners, but now it has become higher. In paragraph 16 of the Counter Affidavit, it is stated that the Director Basic*

Education has sent this recommendation regarding these anomalies to the State Government."

Paragraph- 10 *" We have also perused the rejoinder affidavit. It appears that by G.O. dated 20-7-2001, the pay scale of Head Master of the Junior High School and other teachers in Junior High School has been brought at par with the central Government employees but no corresponding revision was effected in the case of the petitioners. hence we are satisfied that there is discrimination against the petitioners and anomalies in this regard. The petitioners are in fact supervising the work of Head Masters of Junior High School and they were getting higher pay scale before the pay scale of Head Master of the Junior High School was revised on 20-7-2001 the pay scale of the petitioners should have been simultaneously revised. The grievance of the petitioners is, hence fully justified."*

Paragraph- 11 *" In view of the above discussion, the writ petition is allowed. A mandamus is issued to the respondents to grant to the Sub-Deputy Inspector/Assistant Basic Shiksha Adhikaries and Deputy Basic Shiksha Adhikaries forthwith the pay scales as prayed for in the petition. a further mandamus is issued to the respondent to consider grant to the petitioners of higher pay scales than that of Head Master of Junior High School, since they were enjoying higher pay scale before 20-7-2001."*

In the light of the aforesaid facts, the respondents are directed to consider the representation of the petitioner on the basis of G.O. dt. 22-12-2001, 17-10-2000 and 21-2-2002 within

a period of 6 weeks after production of the certified copy of the order.

The writ petition is allowed. There will be no order as to costs.

(Rajesh Tandon, J.)

Dated: - 13-7-2004

M.K.